IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12251 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYCHANTI SURMAJI BALAT - Petitioner(s)

Versus

DY COMMISSIONER OF POLICE & 1 - Respondent(s)

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Appearance :

MR MA QURAISHI for Petitioner(s) : 1,
Ms.Maithili D Mehta, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 24/02/2006

CAV JUDGMENT

1. By filing this petition under article 226 of the Constitution, the petitioner has prayed that the order of dismissal passed by respondent No.1 against the petitioner may be set aside as being arbitrary, void and

without jurisdiction.

2. Heard the learned advocate appearing for the petitioner and Ms.Maithili D.Mehta, learned AGP for the respondent State. I have also perused the material placed on record.

3. It is a case of the petitioner that he had to remain absent due to illness of his mother as she had fallen ill suddenly. The petitioner had to urgently go to her place to help her with the treatment. It is also the case of the petitioner that he had informed his Inspector before leaving the Police Station. These facts had been stated by the petitioner before the Metropolitan Magistrate before whom the complaint under Section 145(2) of the Bombay Police Act was filed. It can be noticed from the order of the learned Metropolitan Magistrate that the Metropolitan Magistrate had, in fact, accepted this factual averments to be true facts, and, therefore, the learned Metropolitan Magistrate had, therefore, taken lenient view of the absence from duty and had fined him Rs.40/-. Further in support of his contention, learned advocate appearing for the petitioner has relied upon the judgment in case of H.P.Thakore V/s State of Gujarat & Ors., reported in 1979 GLR Vol.XX Page 109.

4. From the aforesaid facts, it is clearly established that the petitioner was absent from duty without proper authorization. However, his absence was not deliberate and willful nor was it for the purpose of unauthorizedly withdrawing from duty.

5. While it is true that the petitioner, being a person belonging to uniform force, has to be extra alert and careful regarding his duty. It cannot be gainsaid that there are moments that despite all care and caution, a person is constrained to remain absent due to such urgent reason like the sickness of his own mother. It is needless to point out that a person's duty towards his mother is also one of a great importance and if absented for the aforesaid reason, it cannot be said that a person had deliberately or willfully neglected to perform his duty. As stated earlier, the petitioner had already been punished by the Metropolitan Court for exactly the same issue and the learned Metropolitan Magistrate was also of the view that the petitioner had not deliberately absented himself.

6. In this view of the matter and considering the judgment referred to hereinabove, I am of the opinion that the punishment of dismissal from service is

shockingly disproportionate and harsh and the exercise of the powers under Article 311(2)(a) of the Constitution is not sustainable. I am, therefore, of the view that the punishment of dismissal imposed by the impugned order dated 22.8.1994 is required to be quashed and set aside.

7. In the result, this petition succeeds and the same is allowed. The impugned order dated 22.8.1994 is hereby quashed and set aside. It is directed that the petitioner should be reinstated in his original post with continuity of service. I, however, do not award the salary for the intervening period and in any view of the matter, the learned advocate appearing for the petitioner has also submitted that in the case, the Court passes the order reinstating the petitioner, he would not be pressing for the salary for the intervening period. Rule is made absolute to the aforesaid extent with no order as to costs.

(Sharad D.Dave,J)

srilatha